

ARE ANTI-PRICE GOUGING LEGISLATIONS EFFECTIVE AGAINST SELLERS DURING DISASTERS?

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Abstract

The fear of heightened prices during a period of uncertainty affects all consumers. Many states have enacted statutes to combat opportunistic behavior by sellers of goods and services during disasters. This article compiles the three types of anti-price-gouging statutes currently enforced throughout the United States. Then, using rational choice theory, these anti-price-gouging laws will be applied to various types of gasoline sellers—major oil company owner-operated stations, major oil affiliated stations, and independent stations. The analysis reveals that independent gasoline station owners are least likely to be deterred from monetary sanctions alone; major oil company owner-operated stations and major oil affiliated stations face deterrence from externalities in addition to monetary sanctions. In all cases, without significant improvement in the anti-price-gouging legislations, including efficient oversight, enforcement, and national involvement, consumers will not be safe against post-disaster prices.

I. INTRODUCTION

For state legislators concerned about stabilizing prices during man-made or natural disasters, anti-price gouging regulations have become a prevalent strategy. Strong public support behind anti-price gouging regulations stems from the fear that, without it, merchants will get rich off of disasters while consumers struggle to buy basic necessities.¹

Unlike other legal violations, deciding to participate in price-gouging is mainly a financial decision. During a disaster, the demand for goods increases while the supply of such goods decreases in response to consumer's

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¹ Associated Press, *Thousands Complain to Feds on Gas Gouging: Lawmakers Demand an Investigation*, MSNBC, Sept. 2, 2005, <http://msnbc.msn.com/id/9170150> (last visited Apr. 9, 2009).

desire to stock up on emergency supplies.² There are often no substitutes for essential goods like gasoline, which is essential for driving most cars currently in the market.³ Furthermore, in the case of basic human necessities like water, the demand for goods is inelastic and consumers cannot reduce their consumption based on the increased price.⁴ As a result, stores and gas stations respond to this problem by raising the price so that resources would be allocated to those who are willing to pay the higher price in order to seek greater profit.

Under anti-price gouging statutes, the government places price controls so that price either remains at the “pre-disaster,”⁵ no more than few percentages above it,⁶ or at a point that does not exceed to an “unconscionable” act.⁷ So far, over half of the states in the U.S. have some form of anti-gouging law, with little to no monitoring structure for oversight.

This Note explores the rise of anti-price gouging regulation in the U.S. with emphasis on its flaws. Part II examines the fundamental rule of economics behind price-gouging. Part III focuses on the three types of anti price gouging laws in the U.S. with detailed examination of how several States—California, Virginia, New York, and Louisiana—set gasoline prices in the U.S. Part IV applies basic rational choice theory to the subjects of anti-price gouging regulation: independently owned gasoline stations, gasoline stations owned and operated by a major oil company, and gasoline stations affiliated with a major oil company. It is especially appropriate to apply cost and benefit analysis to find when a rational actor would decide to violate the anti-price gouging law. Using gasoline distributors as an example of such violator, Part IV will illustrate that a rational distributor will commit price gouging only when the benefits of such activity outweighs the cost. By identifying major factors that influence the cost and benefit of price gouging—expected profit, likelihood of prosecution, and government and non-government sanctions, the flaw present in anti-price gouging regulations will be exposed. Part V then highlights ways that states have begun to address the flaw in anti-price gouging regulation in recent years while Part V suggests a few options for increasing compliance.

² See, e.g., EUGENE SILBERBERG, *PRINCIPLES OF MICROECONOMICS* (Pearson Custom Publishing 5th.2007).

³ NADA Data 2007, *Economic Impact of America's New-Car and New-Truck Dealers* (2007). http://www.nada.org/NR/rdonlyres/233DD641-C551-479A-8669-5D7E877A5B92/0/NADA_DATA_2007.pdf.

⁴ See Silberberg, *supra* note 2 at 42.

⁵ MISS. CODE ANN. § 75-24-25 (2008).

⁶ CAL. PENAL CODE § 396 (2009).

⁷ OHIO REV. CODE §1345.01 (2009).

II. FUNDAMENTALS OF PRICE GOUGING

Traditional microeconomics theory can explain how the market sets price for goods based on buyer's demand and seller's supply. Intuitively, any point on the supply curve is how much sellers are willing to provide goods and any point on the demand curve is how much buyers are willing to pay for goods.⁸ During a disaster, the buyer's demand for goods will suddenly increase and shift the demand curve to the right resulting in higher prices. For example, consumers worried about soaring gasoline prices and possible shortages flocked to the pumps in the wake of Hurricane Ike and emptied the tanks at some stations.⁹

In addition, it is also likely that a disaster would make it difficult and more expensive for the seller to obtain goods and maintain retail operations. In this case, the supply curve will shift to the left to reflect the reduction in overall supply and the price will move to a point even higher than with demand shift alone.¹⁰

In a free market without price restrictions, the price would then make goods available to those buyers who are willing to pay the new, higher price.¹¹ The new price will also influence the buyers' behavior to reduce the dependence on the good and reduce consumption to a point lower than the pre-disaster level. In the case of gasoline, this is especially important since the higher price will persuade people to walk or ride bikes instead of using their cars.¹² When fewer people are purchasing gasoline, there will be more available for purchase by rescue workers and other public vehicles, which will create greater social utility.

An artificially low price put in place by anti-price gouging law has several detrimental effects on the economy. First, it fails to regulate goods to those with the greatest demand who will bear the new price to obtain the good. For example, someone who owns a house severely impacted by a hurricane may be willing to pay a higher price for gasoline to fuel his car in order to drive to his out-of-town family as compared to his neighbor who simply wants it for his lawnmower. With fixed prices, price can no longer serve as an imperfect¹³ indicator to signal an individual's "need," and the resource will go

⁸ SILBERBERG, *supra* note 2 at 42.

⁹ Laura Stevens, *State Motorists Flock to Pumps, Run Some Dry*, THE ARKANSAS DEMOCRAT GAZETTE, Sept. 14, 2008, at A1.

¹⁰ See, *infra*, Figure 1.1 Sd represents the shift in supply, and Dd represents the shift in demand during a disaster.

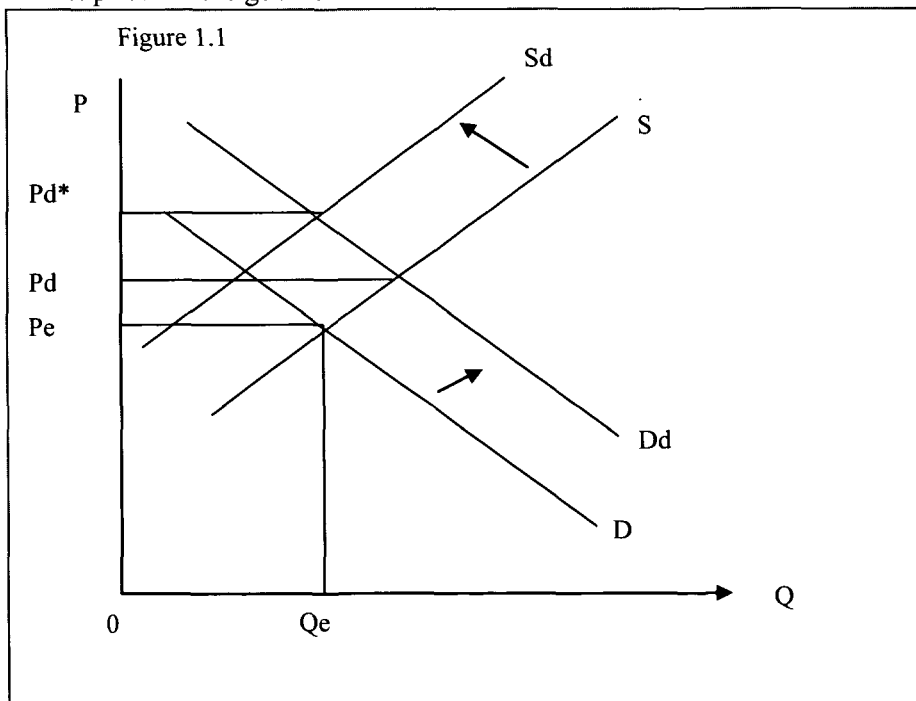
¹¹ See, *infra*, Figure 1.1 Pd* is the price reflecting both shift in demand and supply.

¹² In this case, walking or bicycling become substitutes for automobile rides. This is possible because while demand for gasoline is fairly inelastic, people can still change their behavior in response to rise in prices.

¹³ Need is not necessarily reflected in price alone since those with higher income would be willing to buy a good despite the lack of pressing need.

to whoever rushes to the gas station first. Second, because the price of the good is lower than what the market will bear, the increase in buyer demand will quickly result in shortages and may create higher transactional cost for buyers.¹⁴ Third, since sellers may face a higher cost of operation with a relatively similar price for the good, the seller may simply stop selling it in the legal market, and instead turn to the black market.¹⁵

Overwhelming numbers of law and economics scholars agree that the effect of placing anti-price gouging measures, a form of price control, will have negative influence on the efficiency of allocation of goods and create deadweight loss for the society.¹⁶ However, legislators justify anti-price gouging law based on the public resentment over higher prices. Anti-price gouging measures are also justified by claiming that they ensure distribution of goods to both high income and low income citizens equally.¹⁷ Unfortunately, the resulting market under the anti-price gouging measure aggravates the disparity between wealth and the poor. Even those with low incomes will eventually pay a higher price for the good as they may have to wait longer in line to buy the goods while high income citizens will resort to paying black market price for the goods.



¹⁴ Michael Brewer, *Planning Disaster: Price Gouging Statutes and the Shortages They Create*, 72 BROOK. L. REV. 1101, 1132 (2007).

¹⁵ *Id.* at 1129.

¹⁶ Ari Lehman, Note, *Eliminating the Below-Cost Pricing Requirement from Predatory Pricing Claims*, 27 CARDOZO L. REV. 343 (2005).

¹⁷ Gasoline Consumer Anti-price-gouging Act, S. Res. 94, 110th Cong. (2007).

III. THREE TYPES OF ANTI-PRICE GOUGING STATUTES IN THE U.S.

There are three types of anti-gouging laws in the US: (1) A “percentage increase cap” limit, which fixes post-disaster prices based on pre-disaster prices; (2) a ban on “unconscionable”¹⁸ price increases; (3) and an “outright ban”¹⁹ on any increase in price above what is necessary.

A. Percentage Increase Cap Limit

There are seven states that currently have the “percentage increase cap limit” form of an anti-price gouging statute: Arkansas,²⁰ California,²¹ Maine,²² New Jersey,²³ Oklahoma,²⁴ Oregon,²⁵ and West Virginia.²⁶ The range of the allowed percentage limit is anywhere from ten percent above pre-emergency prices to twenty-five percent above pre-emergency prices.²⁷

California is an example of a state that enforces the “percentage increase cap” model of the anti-price gouging statute. As one of the first States to establish this form of anti-price gouging statute, California passed its law in 1994 after the Northridge earthquake.²⁸ It prohibits overpricing of goods and services following state of emergency or major disaster at a penalty which includes incarceration.²⁹ The statute claims that “some merchants have taken unfair advantage of consumers by greatly increasing prices for essential consumer goods and services...the public interest requires that excessive and unjustified increases in the price of essential consumer goods and services be prohibited.”³⁰ Consequently, a violation of the statute is a misdemeanor punishable by imprisonment for a period not exceeding one year, or by a fine of not more than \$10,000, or both.³¹

According to Official California Legislative Information, following the Northridge earthquake on January 17, 1993, there were numerous instances

¹⁸ VA. CODE ANN. § 59.1-527 (2008).

¹⁹ GA. CODE ANN. §§ 10-1-393.4 to 397 (2008).

²⁰ ARK. CODE ANN. § 4-88-303 (2008).

²¹ CAL. PENAL CODE § 396 (2009).

²² 10 ME. REV. STAT. ANN. § 1105 (2008).

²³ N.J. STAT. ANN. § 56:6-21 (2009).

²⁴ OKL. ST. tit. 15, § 20-777.5 (1999).

²⁵ OR. REV. STAT. § 646 (2008).

²⁶ W. VA. CODE § 46A-6J-1 (2008).

²⁷ *Supra*, notes 18-28.

²⁸ CAL. PENAL CODE, *supra* note 21.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

of price gouging documented by the City of Los Angeles.³² It was expressed by Senators Katz and Bowen that the existing city ordinance against price gouging proved inadequate to combat widespread practice of price gouging for the entire State.³³ Two days after the earthquake, the Los Angeles Consumer Affairs Department set up a fraud hotline and received 150 complaints during its first day.³⁴ During the following month, the Los Angeles Consumer Affairs Department received more than 1400 complaints.³⁵ For example, Waste Management, Inc. charged nearly \$200 more per bin as compared to pre-earthquake, and 7-Eleven franchises charge inflated prices for food, water, and batteries.³⁶ Some of the worst abuses during this period were \$8 gallons of milk and \$200 sheets of plywood.³⁷

Senator Katz, who introduced the bill, was adamant about the ten percent limit because this bill already gave room for post-emergency price increases "directly attributable to additional costs."³⁸ Thus, the ten percent limit was agreed by most proponents as a reasonable cap for emergency prices. Despite the sole opposition by Chevron, an overwhelming number of groups supported the passage of the bill.³⁹ The large number of supporters of the anti-price gouging bill is a testament to the general popularity of anti-price gouging statutes. Not surprisingly, the bill won the necessary support from both the House and the Senate and was signed into law by Governor Wilson in 1994⁴⁰.

Because California only allows enforcement of the anti-price gouging legislation when a state of emergency is declared by the governor or the president, there have only been a few times when it has been utilized. In the aftermath of Hurricane Katrina, more than 1,150 complaints were reported to the California Attorney General's office but only about fifty cases were

³² S. Rep. AB 0001-0650, http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab_0001-0050/abx1_36_cfa_940609_162322_sen_comm (last visited Apr. 9, 2009).

³³ *Id.*

³⁴ *Id.*

³⁵ Kenneth Howe, *Price Gouging Bill Passes Hurdle*, S.F. CHRON., July 7, 1994, at D1.

³⁶ Bill Analysis, http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab_0001-0050/abx1_36_cfa_940502_174437_asm_comm (last visited Apr. 9, 2009).

³⁷ *Id.*

³⁸ *Id.*

³⁹ Los Angeles District Attorney's Office, California Automobile Association, California Attorney General, California Grocers Association, California State Association of Counties, California Citizen Action, Los Angeles City Council, Consumer Action, Consumers Union, Ventura County Board of Supervisors, Los Angeles Chamber of Commerce, League of California Cities, Mexican American Legal Defense and Educational Fund, the Mary Immaculate Church in Pacoima, Valley Organized in Community Efforts in San Fernando, and the Southland Corporation.

⁴⁰ *Supra*, note 35.

investigated further, and all were dismissed without prosecution.⁴¹ Critics blamed the problem on the percentage increase cap model, which allows for exclusion of price increases based on the increase in operation costs post-disaster.⁴² California Attorney General Bill Lockyer stated, “the current law allows us to investigate the corner gas station but not the refinery. And what we’ve seen multiple times, especially this year, is a very large run-up refinery (profit) margins.”⁴³ With the exception of Missouri, Texas, and Wisconsin, all anti-price gouging statutes allow room for increased cost before measuring abuse in price. Admittedly, then, the percentage cap model is inadequate to protect consumers against price gouging post-disaster.

B. Unconscionable Price Limit

There are sixteen states that established the “unconscionable price limit” form of anti-price gouging statute: Alabama,⁴⁴ Florida,⁴⁵ Idaho,⁴⁶ Indiana,⁴⁷ Iowa,⁴⁸ Massachusetts,⁴⁹ Missouri,⁵⁰ New York,⁵¹ North Carolina,⁵² Pennsylvania,⁵³ South Carolina,⁵⁴ Tennessee,⁵⁵ Texas,⁵⁶ Vermont,⁵⁷ Virginia,⁵⁸ and Wisconsin.⁵⁹ Of these states, some try to define “unconscionability” as a gross disparity between pre⁶⁰ or average⁶¹ price when compared to post-

⁴¹ David Baker, *Anti-gouging Laws Don’t Cut Gas Prices*, THE S.F. CHRON., May 10, 2006, at A1.

⁴² Dale Kasler, *Debate Over Alleged Gas-price Gouging in California Continue*, SACRAMENTO BEE, Sept 9, 2005,

⁴³ *Id.*

⁴⁴ ALA. CODE § 8-31-1-6 (2008).

⁴⁵ FLA. STAT. ANN. § 501.160(2) (West 2008).

⁴⁶ IDAHO CODE ANN. §48-603 (2009).

⁴⁷ IND. CODE ANN. § 4-6-9-1-2 (West 2008).

⁴⁸ IOWA ADMIN. CODE 61-31.1 (714) (2008).

⁴⁹ 940 MASS. CODE REGS. § 3.18 (2008), MASS. GEN. LAWS ANN. Ch. 93A , § 2 (2008).

⁵⁰ 15 MONT. CODE ANN. § 60-8.030 (2008).

⁵¹ N.Y. GEN. BUS. LAW § 396-r (1) (2008).

⁵² N.C. GEN. STAT. § 75-38 (2008).

⁵³ 2006 PA. LAWS 133.

⁵⁴ S.C. CODE ANN. § 39-5-145 (2008).

⁵⁵ TENN. CODE ANN. §§ 47-18-5101 thru 47-18-5104 (2008).

⁵⁶ TEX. BUS. & COM. Code § 17.44 (2007).

⁵⁷ VT. STAT. ANN. tit. 9, § 2461d (2008).

⁵⁸ VA. CODE ANN. § 59.1-526 (2008).

⁵⁹ WIS. STAT. ANN. §100.305 (West 2008).

⁶⁰ Florida, Indiana, South Carolina, and Virginia use the pre and post-disaster price comparison.

⁶¹ Both the New York and Missouri statutes compare average pre-disaster price against post-disaster price.

disaster prices, while others focus on prices as compared to other goods in the same trade area outside the disaster area.⁶²

Massachusetts' anti-price gouging statute is of note because it was not passed by the legislature, but it was passed by the Attorney General's regulation. It is unique from other anti-price gouging statutes in that it only applies to petroleum products and not to general goods and services. However, there have been attempts to broaden the scope to include general necessities like home heating oil, bottled water, foodstuffs, medicines, housing.⁶³

This law first describes what an unconscionable price is and then gives leeway for price change due to market disruption. A price is unconscionable when

the amount charged represents a gross disparity between the price of the petroleum product and 1) the price at which the same product was sold or offered for sale immediately prior to the onset of the market emergency [the "pre-price"], or 2) the price at which the same or similar petroleum product is readily obtainable by other buyers in the trade area [the "average price"].⁶⁴

In the aftermath of Hurricane Katrina, Massachusetts Governor Mitt Romney and Attorney General Thomas Reilly established a hotline for consumers to report evidence of price gouging.⁶⁵ In addition, state inspectors surveyed gas prices across Massachusetts in search of violators.⁶⁶ As a result, the Massachusetts Office of Consumer Affairs turned over forty-six complaints to Attorney General Reilly concerning gas prices ranging from \$3.70 to \$4.00.⁶⁷ No suits, however, resulted from these investigations.⁶⁸

Massachusetts's experience when attempting to enforce an anti-price gouging statute is a typical result of states that use "unconscionable" language. When state actors follow up on an alleged gasoline hike, it is almost impossible to draw a line to show when an increase in price is enough to bring

⁶² Massachusetts anti-price gouging legislation compares price of good against those in the same trade market. *Supra* note 49.

⁶³ Bill proposed by Sen. Gale Candaras (D-Wilbraham) in 2007. S. Res. 930, 185th Cong. (2007).

⁶⁴ 940 Mass. Code Regs. 3.18 §§ 2(a)(1), 2(a)(2) (2008).

⁶⁵ Peter Howe, *Romney Warns Suppliers Against Price Gouging*, BOSTON GLOBE, Sept. 3, 2005, at A10.

⁶⁶ Lucas Wall, *State Checks Gasoline Pumps for Signs of Gas Price Gouging*, BOSTON GLOBE, Sept. 4, 2005, at B5.

⁶⁷ *Id.*

⁶⁸ Charles Stein, *AG Studies Price-Gouging Claims; Consumers File 46 Complaints over Gas Run-up After Hurricane*, BOSTON GLOBE, Sept. 9, 2005, at C3.

a prosecution. The problem is only heightened when it is taken into account that no penalty for gouging is specified in law. Accordingly, in Massachusetts, an owner of a gasoline station does not know both when his price will cross the “unconscionable” line and what the consequence of such price would be. This is one of the best examples of ineffective anti-price gouging regulation.

Missouri’s anti-price gouging statute resembles Massachusetts’s model with one noticeable difference—enforcement. While it is also a regulation passed by the Attorney General as part of the administrative code, Missouri’s Attorney General’s Office is very active in soliciting resident complaints and filing lawsuits.

In Missouri, price gouging occurs when a seller charges “within a disaster area an excessive price for any necessity” or charges “excessive price for any necessity which the seller has reason to know is likely to be provided to consumers within a disaster area.”⁶⁹ Aside from monetary punishment of \$1,000 per violation plus restitution, the Missouri Attorney General’s Office also provides injunctive relief to stop price gouging. In addition, if price gouging is committed knowingly, a possible felony charge can be imposed on the seller.⁷⁰

After the September 11, 2001 attacks, Missouri Attorney General Jay Nixon brought legal actions against forty-eight gasoline stations around the state after over 1,000 complaints were made about rising gasoline prices. Nixon stated in the press release that “stations that chose to make a profit on this terrible tragedy have an opportunity to settle with the state for terms that take away any financial gain and provide assurances that such unconscionable and unpatriotic actions will not take place again.”⁷¹ The monetary penalty imposed was either to pay three times the profits in civil penalties or \$750 per station, whichever is greater, in addition to the \$250 cost of investigation.⁷² Eventually, all forty-eight stations settled their cases and the total settlement from all forty-eight stations was \$60,000.⁷³

Similarly, in 2005, Missouri Attorney General Nixon investigated retail gas prices post-Katrina and filed ten legal actions on price gouging violations.⁷⁴ After looking at a twenty-day snapshot, comprising information from ten days before and ten days after the hurricane, Nixon compared the

⁶⁹ MO. CODE REGS. ANN. tit. 15, § 60-8.030 (2008).

⁷⁰ *Id.*

⁷¹ *Nixon Demands Monetary Penalties from Price-gouging Gas Stations*, AGO.MO.GOV, Sept. 11, 2001, <http://ago.mo.gov/newsreleases/2001/091901.htm> (last visited Apr. 9, 2009).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Nixon Investigation into Post-Katrina gas pricing leads to legal action against 10 gas stations*, AGO.MO.GOV, Sept. 28, 2005, <http://ago.mo.gov/newsreleases/2005/092805.htm> (last visited Apr. 9, 2009).

price margin between retailers and isolated violators.⁷⁵ One of the violators, Express Lanes, increased its profits by over 400% which was beyond the “excessive” standard of the state’s regulation. Interestingly, most of the ten gasoline stations settled with the Attorney General’s Office with settlements ranging from \$500 to \$2,500.⁷⁶

Most cases of price gouging alleged by the Missouri Attorney General settled without ever reaching the courts. To escape prosecution, gasoline stations in question sign “Assurances of Voluntary Compliance” when agreeing to pay fines according to Missouri law.⁷⁷ However, Assurance of Voluntary Compliance is not considered an admission of a violation for any purpose.⁷⁸ Though the company must agree not to violate the anti-price gouging law in the future, Assurance of Voluntary Compliance hardly creates enough incentive for future deterrence since the settlement sum is often very low.

The New York anti-price gouging statute is probably the most important one to focus on because many states modeled their statute after it. In addition, New York is one of the few States with established case law on anti-gouging prosecution. Thus, analysis of New York’s unconscionability test will serve as an example of how violators are charged in the court.

The New York State Legislature has determined that a valid state interest would be protected by discouraging price gouging by merchants of home heating oil.⁷⁹ Then-Governor Hugh Carey explained that “the State cannot tolerate excessive prices for a commodity which is essential to the health and well-being of millions of the State’s residents.”⁸⁰ Further examination of the legislative intent reveals that the statute was intended to include in the “consumer goods and services” items such as milk, gasoline, as well as home heating oil.⁸¹

The New York Legislature deferred the task of defining “unconscionably excessive” to the courts as a question of law.⁸² However, the court is instructed to look at the following factors: (i) that the amount of excess in price is unconscionably extreme; (ii) that there was an exercise of unfair leverage or unconscionable means; and (iii) a combination of the first two factors.⁸³ Prima facie proof of unconscionability includes situations where “a gross disparity” exists between the price of the goods and their usual price or

⁷⁵ *Nixon Demand’s Monetary Penalties*, *supra* note 72.

⁷⁶ *Id.*

⁷⁷ *Supra* note 69.

⁷⁸ MO. REV. STAT. § 407.030 (2007).

⁷⁹ *New York v. Strong Oil Co.*, 433 N.Y.S.2d 345, 347 (1980).

⁸⁰ 1979 N.Y. Sess. Laws 7 (McKinney)

⁸¹ *Id.*

⁸² N.Y. GEN. BUS. § 396-r (1), *supra* note 53.

⁸³ N.Y. CLS GEN. BUS. LAW § 396-r (3)(a).

where the “amount charged grossly exceeded” the price of similar goods in the trade area.⁸⁴

In *People v. Two Wheels Corp.*, the Attorney General of New York brought a proceeding against a retailer of portable electric generators alleging violation of price-gouging prohibition following Hurricane Gloria.⁸⁵ The defendant corporation took advantage of the electrical power outage in the aftermath of a hurricane by selling approximately 100 generators at inflated prices ranging from four percent to sixty-seven percent over the base price.⁸⁶ Accordingly, the court used the Leff definition of unconscionability—procedural and substantive—to conclude that the fact that price increases were attributable only to the new bargaining advantage during the storm was *prima facie* unconscionable.⁸⁷

In another case involving electric generators, *People v. Beach Boys Equipment Company*,⁸⁸ following an ice storm, the defendant retailer charged \$1,200 for the generators while others in the area charged less than half that price.⁸⁹ After contending that the additional expenses in transportation made it necessary to increase the price, the defendant nevertheless failed to show that the large increase of almost 100% was necessary.⁹⁰ Consequently, the defendant was found to have violated the anti-price gouging statute and was ordered to give restitution to his clients.⁹¹ It is important to note, however, that many states do not allocate restitution directly to the consumers who were taken advantage of by the seller. For example, fines imposed in Connecticut go to state government projects.⁹²

Following Hurricane Katrina, a case was brought against a gasoline retailer for charging an unconscionably excessive price.⁹³ Prior to Hurricane Katrina, the defendant gasoline retailer used a markup of eighty-three cents per gallon of gas.⁹⁴ Post-disaster, however, the defendant station steadily increased its markup until it reached \$1.08 per gallon.⁹⁵ In this case, while the supplier’s

⁸⁴ N.Y. CLS GEN. BUS. LAW § 396-r (3)(b).

⁸⁵ *People of the State of New York v. Two Wheel Corp.*, 525 N.E.2d 692 (N.Y. 1988).

⁸⁶ *Id.* at 696.

⁸⁷ *Id.*

⁸⁸ *People v. Beach Boys Equip. Co.*, 709 N.Y.S. 2d 729 (N.Y. App. Div. 4th Dep’t 2000).

⁸⁹ *Id.* at 730.

⁹⁰ *Id.*

⁹¹ *Id.* at 852.

⁹² Press Release, Connecticut Attorney General’s Office, Attorney General Announces Six Stations to Pay State Almost \$45,000 to Settle Katrina Price Gouging Charges (Aug. 14, 2006).

⁹³ *People of the State of New York v. Wever Petroleum*, 827 N.Y.S.2d 813 (N.Y. Sup. Ct. 2006).

⁹⁴ *Id.*

⁹⁵ *Id.* at 814-15.

cost had increased the base cost of the gasoline, it was not enough to justify a gap of almost twenty cents per gallon in the markup after the disaster.⁹⁶ As a result, both an injunction preventing the station from selling gasoline at the unconscionable level as well as a \$2,000 fine was imposed. However, it is difficult to tell where the line is between unconscionable price and a normal fluctuation in price. Furthermore, if the new markup prices were maintained following the hurricane for at least a week, it seems inadequate to impose only a \$2,000 fine.

C. Outright Ban

Seven states require merchants to maintain the strictest level of anti-price gouging regulation—an outright ban: Connecticut⁹⁷, Georgia⁹⁸, Hawaii⁹⁹, Kentucky¹⁰⁰, Louisiana¹⁰¹, Mississippi¹⁰² and Utah.¹⁰³ These outright ban statutes are different from other types of regulation in that they apply only when triggering events occur.¹⁰⁴

Connecticut's anti-price gouging statute simply states that, "no person, firm or corporation shall increase the price of any item...in an area which is the subject of any disaster emergency declaration issued by the Governor,"¹⁰⁵ with the exception of price fluctuation during the "normal course of business."¹⁰⁶ It is unclear from the language itself whether an increase in price during a disaster in response to an increase in operation costs will constitute a violation. Though it may be vague, the initial bill passed 140 to zero votes in the House and thirty-five to zero in the Senate in 1986.¹⁰⁷ In 2005, the Connecticut legislature amended the anti-price gouging statute by increasing the maximum fine from \$5,000 to \$10,000 per violation.¹⁰⁸ In addition, it now covers not only prices during a declaration of emergency but also when an

⁹⁶ *Id.*

⁹⁷ CONN. GEN. STAT. § 42-230 (2008).

⁹⁸ GA. CODE ANN. §10-1-393.4 (West 2008).

⁹⁹ HAW. REV. STAT. ANN. § 209-9 (West 2008).

¹⁰⁰ KY. REV. STAT. ANN. § 367.374 (West 2008).

¹⁰¹ LA REV. STAT. ANN. § 29:732 (West 2008).

¹⁰² MISS. CODE ANN. § 75-24-25 (West 2008).

¹⁰³ UTAH CODE ANN. § 13-41-201 (West 2008).

¹⁰⁴ See generally Geoffrey C. Rapp, *Gouging: Terrorist Attacks, Hurricanes, and the Legal and Economic Aspects of Post-Disaster Price Regulation*, 94 KY. L. J. 535, 535-560 (2005).

¹⁰⁵ *Supra* note 97.

¹⁰⁶ *Id.*

¹⁰⁷ Cale Wren Davis, *An Analysis of the Enactment of Anti-Price Gouging Laws* 29 (May 15, 2008) (unpublished masters dissertation, Montana State University) (on file with Montana State University library).

¹⁰⁸ CONN. GEN. STAT. §42-234(a) (2008).

“abnormal market disruption is reasonably anticipated.”¹⁰⁹ This new amendment affects retailers as well as wholesalers.¹¹⁰

By 2006, in the aftermath of Hurricane Katrina, the amended price-gouging statute resulted in charges against several gasoline companies. Eventually, those retailers settled with the Connecticut Attorney General for amounts averaging from \$1,591 to \$5,000,¹¹¹ with some as high as \$43,891.¹¹² Attorney General Richard Blumenthal described the settlement as, “more than money, what matters is the loud alarm to the industry,”¹¹³ indicating his reliance on the deterrent effect on sellers rather than on the potential penalty itself.

Like most states, Georgia did not enact its anti-price gouging statute until after its 500 year flood in 1994.¹¹⁴ According to the 1994 Annual Report released by the Georgia Governor’s Office of Consumer Affairs, regulators in Georgia felt that “some definitive language in the Georgia Code regarding price-gouging in emergency situations would be very helpful.”¹¹⁵ In response, the House commissioned an Emergency Management Study Committee to investigate problems in dealing with natural disasters.¹¹⁶ After finding that the state needed more specific legislation condemning price-gouging during a disaster, House Bill 283 was introduced. The bill, which prevents gouging in consumer necessities, was ultimately passed to amend the Fair Business Practices Act (“FBPA”).¹¹⁷

Georgia’s anti-price gouging statute provides that “it shall be an unlawful, unfair, and deceptive trade practice...in any area in which a state of emergency... has been declared...to sell or offer for sale at retail...at a price higher than the price at which such goods were sold or offered for sale immediately prior to the declaration of a state of emergency.”¹¹⁸ House

¹⁰⁹ *Id.*

¹¹⁰ CONN. GEN. STAT. § 42-234(a) (2) (2008).

¹¹¹ DCP Commissioner Announces First Round of Price Gouging Settlements with Gasoline Retailers, *supra* note 86.

¹¹² Press Release, Connecticut Attorney General’s Office, Attorney General Announces Six Stations to Pay State Almost \$45,000 to Settle Katrina Price Gouging Charges (Aug. 14, 2006).

¹¹³ DCP Commissioner Announces First Round of Price Gouging Settlements with Gasoline Retailers, *supra* note 86.

¹¹⁴ A 500 year flood is such a large scale flood that it only occurs once every 500 years.

¹¹⁵ GOVERNOR’S OFFICE OF CONSUMER AFFAIRS, STATE OF GEORGIA, 1994 ANNUAL REPORT (1994).

¹¹⁶ John Creasey, Jr, *Selling and Other Trade Practices: Allow Price Control During a State of Emergency; Provide for Exceptions; Permit County and Municipal Authorities to Request Registration of Certain Businesses During a State of Emergency*, 12 GA. ST. U. L. REV. 31, 33 (1995).

¹¹⁷ *Id.* at 37.

¹¹⁸ GA. CODE ANN. §10-1-393.4 (West 2008).

Representative Hurt, who participated in the passage of the statute, noted that “there is no opportunity to comparison shop. Customers are ignorant of the regular prices, they are in a state of shock and traumatized by the disaster. Because of these sales, the victims are further victimized. The laws of supply and demand should be suspended in unnatural situations.”¹¹⁹ But the law of supply and demand cannot be suspended simply by enacting a statute. Customers will still demand goods at a much higher rate than the suppliers can provide. While fixing the markup level and imposing penalties on those who take advantage of their enhanced market position may provide incentive for some sellers to keep their prices low, others may simply stop selling altogether in a white market or continue to sell, but with an attempt to evade inspectors.

The most important aspect of Georgia’s anti-price gouging statute is its registration program. Counties and municipalities can adopt “a program of emergency registration of all or certain designated classes of businesses...during a state emergency.”¹²⁰ Such registration can continue for the duration of the emergency and for a three-month recovery period.¹²¹ A business that fails to register can thus no longer lawfully conduct its business. This portion of the statute was first suggested by the Association of County Commissioners of Georgia (“ACCG”) to the House Industry Committee.¹²² By establishing a quick way to get in contact with businesses operating during a state emergency, the local government is able to recognize unfair business practices in a cost effective way. Furthermore, police officers could easily apprehend violators by requiring registered businesses to display the registration on their location’s window.

Despite the highest level of restriction in the outright ban approach, those states with an outright ban did not show a greater number of violators or amount of prosecution cases. Even the fine ultimately imposed to violators via settlement was at par or lower than those states that imposed an “unconscionability” standard or a “percentage gap test.”¹²³

IV. RATIONAL CHOICE BEHIND PRICE GOUGING

Viewing human behavior as a result of individuals trying to maximize their utility from a set of preferences and information has been championed by many scholars in the area of behavioral law and economics.¹²⁴ Gary Becker is most famous for using the behavioral law and economics model to assess the effectiveness of crime and punishment, focusing on the cost and benefits to

¹¹⁹ Creasey, *supra* note 116, at 38 n.21.

¹²⁰ GA. CODE ANN. §38-3-56 (West 2008).

¹²¹ *Id.*

¹²² Creasey, *supra* note 116, at 37-38.

¹²³ CONN. GEN. STAT. § 42-230 (2008); KY. REV. STAT. ANN. § 367.374 (West 2008).

¹²⁴ See generally Silberberg, *supra* note 2.

individual violators and the optimal conditions to yield greatest social good.¹²⁵ Unlike traditional criminal offenses like robbery, rape, or murder, price-gouging is particularly suited for economic analysis based on monetary units because both the benefit and the cost related to the activity is purely financial. While there are many states with criminal penalties—Arizona¹²⁶, California¹²⁷, Connecticut¹²⁸, Louisiana¹²⁹, Mississippi¹³⁰, South Carolina¹³¹, and West Virginia¹³²—all states generally resort to a settlement without full prosecution, and imprisonment of the violator is not sought.

A. How Gas Prices Are Set

In the U.S., many gas stations are owned or leased by major oil companies and thus do not set their own prices. Instead, in the case of company-owned-and-operated stations, the price of gasoline is predetermined and communicated by the oil company. For gas stations leased or branded by the oil company, the gas price to the dealer is set based on what the retailer's margin should be after retail sales. Thus, in order to maintain profits and remain competitive, a retailer can only charge a nominal margin on top of the dealer's price. In addition, oil companies suggest retail prices to all of their independent dealers, which the dealer may choose to follow. Currently, roughly two-thirds of all gas stations are associated with a company brand and thus receive this suggested price.¹³³

For all gas stations, either independent or affiliated with a major oil company, the majority of the gas price reflects the price of crude oil (46%), refining cost (14%), and taxes (28%), leaving little room for the retail operator's operation cost and profit.¹³⁴ The only difference between the two types of gas retailers lies in how operational cost and profit are allocated. However, since the all retailer prices are set with their competitors' prices in mind, whether it is done by the gas company or a private station owner, general gasoline prices tend to travel together during regular season.

¹²⁵ Gary Becker, *Crime and Punishment: An Economic Approach*, 76 J. POL. ECON., 169-217 (Mar./Apr. 1968).

¹²⁶ A.C.A. § 4-88-301 thru 4-88-305 (2008).

¹²⁷ CAL. PEN. CODE § 396 (2008).

¹²⁸ CONN. GEN. STAT. § 42-230 (2008).

¹²⁹ LA R.S. 29:732 (2008).

¹³⁰ MISS. CODE ANN. § 75-24-25 (2008).

¹³¹ S.C. CODE ANN. §39-5-145 (2008).

¹³² W.V. CODE § 46A-6J-1 (2008).

¹³³ National Petroleum News, *MarketFacts 2008*.

¹³⁴ *Gas Prices: How Are They Really Set?: Hearing Before the Subcomm. of Investigations of the S. Comm. on Homeland Security and Gov't Affairs*, 107th Cong. 107-509 (2002) (statement of David C. Reeves, President, North America Products, ChevronTexaco Corp.).

B. *Basic Model of Deterrence*

Using the rational choice theory to analyze gas station owners' behavior, I will assume that a station owner who sets post-disaster prices is trying to maximize his utility by weighing the cost and benefits of his actions. Thus, individuals will choose to participate in price gouging if the utility of rewards (weighted by the probability of obtaining it) outweighs the utility of costs (weighted by the probability of getting caught):

$$(1) \quad \Pr U(\text{rewards}) > P_c U(\text{costs})$$

Such decisions can be explained by three main factors: (1) the risk of getting caught weighted by the severity of the punishment; (2) the potential monetary gain from crime; and (3) the risk of non-governmental sanction, including loss of good will from customers and response from the affiliated oil company.

Furthermore, the way an individual gasoline distributor perceives those three factors will vary depending on the type of operation. A gas station owned and operated by a large oil conglomerate will perceive the cost and benefit of price gouging using different sets of utility equations than those who are merely affiliated or completely independent. Thus, I will consider the gasoline distributor's decision for price gouging separately by category.

1. *Stations Owned by Major Oil Companies*

Several major oil companies own and operate their own stations across the U.S., including Shell, Exxon, Chevron, Conoco, and BP, to name a few. For those large companies, their operations are spread across many state lines, which can effectively diversify market risks that arise from natural and man-made disasters. Furthermore, there are additional interests to these companies aside from profit from sales alone, including effective branding, public goodwill, and business-friendly state government regulations. Thus, in weighing whether large oil company's utility of reward will be greater than the costs, we must modify our earlier equation (1) to reflect their unique interests:

$$(2) \quad U(\text{rewards}) = U(\text{profit from gouging}), \text{ while}$$

$$(3) \quad U(\text{cost}) = U(\text{loss of goodwill, negative public image, fines, penalties}).$$

Furthermore, in states with anti-price gouging laws, a large oil company is much easier for government actors to identify and punish in case of a violation. The resulting probability of cost (P_c) for a large oil company is thus much higher than those with less recognizable stations.

As you can see, the benefits from price gouging by large oil companies consist of monetary gain from the illegal action weighed by the chance that they will get caught. On the other hand, in deciding to raise post-disaster prices to a level that violates unconscionability or a set price range, an

individual gas station owned and operated by a major oil company will lose good will from the public and gain lasting negative public sentiment. In addition, because large companies distribute oil on a larger scale, when caught by law enforcement, the resulting monetary fine and impact of sanctions will be much greater in the aggregate than that of independent station owners. It is also likely that state regulators may respond once the disaster settles by raising taxes or heightening standards for oil companies to operate in their state. Overall, it is likely that large oil company-operated stations have very little to gain while much to lose over the long term.

2. Leased or Affiliated Gas Stations

Leased or affiliated gas stations also face a unique set of interests in choosing whether or not to price gouge their customers. Those gas stations are run under an identifiable brand, so the increased risk of being caught remains as high as for those stations owned and operated by major oil companies. However, since the overall company's long term development is of smaller concern for those who are operating under a lease or franchise agreement, their cost function will not place significant value on the loss of good will or a negative brand image. As a mere member station, an affiliated operator is likely to leave brand development and the task of building a loyal customer base to the major oil companies. Nevertheless, these affiliated and leased stations do face an additional cost in calculating the cost of price gouging—sanctions from the parent company. Most, if not all, of the stations that are affiliated or leased are under a contract with the parent company that specifically reserves the right to terminate the contract for inappropriate behavior. Thus, the station owners who are leasing from or are affiliated with a major oil company must fear getting caught not only by the state government regulators, but also by their parent company.

On the other hand, the expected benefits for leased or affiliated stations are higher than that of large corporate-owned and managed companies because they are not obligated to follow the parent company's suggested retail price, nor report what price level they chose. As long as the operator chooses a level that can take advantage of the increase in demand and decrease in overall market supply without charging too much, the station will easily reap extraordinary profits by gouging post-disaster prices. Also, unlike those owned and operated by large corporations, mere affiliation or lease means that profit will remain concentrated in the hands of the immediate operator, rather than becoming an addition to the parent company's profit. Accordingly:

- (4) $U(\text{rewards}) = U(\text{profit from gouging})$, while
- (5) $U(\text{cost}) = U(\text{loss of goodwill, fines, penalties, disenfranchisement})$.

When applying the relevant probability of receiving the benefit with the benefit gained from price gouging against the probability of getting caught and the likelihood of loss of good will from the local customers, fines and penalties imposed by the state government, and the possibility of disenfranchisement from the parent oil company, it is likely that the deterrent effect of price-gouging regulation comes not from the law itself, but from the externalities.

3. *Independent Gas Station Operators*

Once again, we must look at the benefits that the station operator will expect to gain from price gouging against his likelihood of getting caught and the associated costs. In this case, the price is set by the independent owner, who receives any gain directly. Hence, as long as the owner can avoid getting caught, there will be a significant benefit. Unlike gas stations owned or leased by a large oil company, independent operations are not usually as easily identifiable. In addition, since the average independently-owned stations are smaller in size compared to the major oil brands, even with price gouging, the aggregate money extracted will not be high enough to attract regulators. Thus, the independent operator's risk of getting caught (R_f) is much less than that of major oil company owned or leased operations.

As for the cost of violating the anti-price gouging law, the independent operator faces the possibility of fines and sanctions from the government and loss of local client good will. Unlike the affiliated operators, independent operators are under no fear of disenfranchisement to add to their deterrence effect. Furthermore, the amount of the fine that can possibly be imposed is much smaller than for larger violators. It is also unlikely that state legislatures' responses of imposing higher standards, making it difficult to open another gas station, will be of concern for independent operators.

- (6) $Pr(\text{rewards for independent}) > Pr(\text{reward for major oil \& affiliates})$;
- (7) $P_c(\text{cost when caught for independent}) < P_c(\text{cost when caught for major oil})$.

Because the probability of reward is greater than for major oil company-owned or leased stations and, at the same time, the probability of cost is less than for those major oil company-owned or leased stations, it is sufficient to note that independent gas station operators are far more likely to choose to violate the anti-price gouging law than other types of gas stations.

- (8) $U(\text{rewards}) = U(\text{profit from gouging})$, while
- (9) $U(\text{cost}) = U(\text{loss of good will, fines})$.

Since loss of goodwill is of minimal value, especially where the natural price equilibrium would have been at the level of the chosen price, the equation becomes:

$$(10) U(\text{profit from gouging}) > U(\text{fines}).$$

As all of the states charge violators of anti-price gouging regulations a monetary fine, with rare cases for suspension of business licenses, the decision for a rational independent gas station owner becomes a mere financial calculation. The probability of getting away with price gouging is much higher than the probability of getting caught since disaster not only drives up the demand, but makes it more difficult for the enforcement agents to thoroughly check market prices, as compared to disaster-free times. Also, the amount of profit that a single station can gain from gouging prices to a willing buyer far exceeds the fine imposed if prosecuted. Therefore, the independent gas station operator is not at a high risk for violations of anti-price gouging law in the event of natural or man-made disaster.

V. CURRENT ANTI-PRICE GOUGING PROBLEMS AND REMEDIES

The penalty for price gouging can range from simple fines to criminal penalties. In thirteen of the thirty-two states that have anti-price gouging laws, specific fines placed on the violators range from \$1,000 to \$10,000 per violation.¹³⁵ However, since price gouging by the gas station operator can yield substantial returns, unless the fine and the likelihood of getting caught exceed its benefit, the statute will not influence behavior without more.

An interesting observation from the states with anti-price gouging laws is that even those states with criminal penalties offer only minimal prison terms. Using economic terms, a person's freedom can be expressed as the possible lost wage per given time. While prison terms may offer greater deterrence effect than the financial fine alone, without greater prison terms, not all of the potential price gouging violators will be deterred.

In addition, the 10-25% range of pre-disaster prices as a ceiling for the post-disaster prices show the inherent flaw in its rigid guidelines. During both man-made and natural disasters, the increase in the pre-disaster prices reflects not only the increase in demand by the consumers and the reduction in supply, but also the cost associated with the ordinary shipping and distribution of such goods. For example, if a hurricane severed all ground transportation methods for transporting gasoline, then the increase in the cost of providing that good may easily rise well above the 25% ceiling. Thus, while the range may give a clearer indication than the "unconscionable" language, it is not without its obvious flaws.

¹³⁵ Davis, *supra* note 107, at 22.

VI. CONCLUSION

To maximize the efficiency of states' anti-price gouging measures, the focus must shift to targeting the gas station owners who are most likely to violate the law, rather than spreading the resources to all types of gas stations. In addition, the federal government must establish coordination of individual states' efforts to monitor the price of goods.

The first tactical change in enforcement should be who does the enforcing. There are two groups of ready watchdogs who can be utilized to improve the likelihood that a price gouging gas station will be caught—consumers and competitors. Consumers are an obvious choice because they are the ones that legislators are trying to protect from excessively high prices. Due to recent technological advancements, most consumers now carry a camera along with their cell phone. By simply setting up a tip-line during disasters for consumers to e-mail or send picture messages via their cell phone, any abnormal price change will be reported quickly and efficiently. Recently, the Governor's Office of Consumer Affairs in Georgia reported that "we're getting a lot more calls about what happened at this point than we did in the last gas situation (after Hurricane Katrina)."¹³⁶ In addition, the Consumer Affairs Office posted each investigation result on the Web as it was concluded, making it much easier for citizens to stay informed.¹³⁷ Likewise, independent reporting entities like AAA should be tapped as a source of cheap information.

Competitors will be far more difficult to utilize. As members of the same industry, they will be far more reluctant to report, even if it means increased profit and greater market share for themselves. Worse yet, they may even collude to avoid reporting violations all together. To overcome this problem, the regulators should focus on asking for gas station operators to volunteer their own prices rather than reporting their competitor's prices. Setting up a voluntary reporting system for gas stations during a disaster period would make it easier to isolate those who comply with the law from those who do not. It can also help guide the station operators to know when their prices are high enough to be considered a violation. Then, appropriate warning can be given to those who volunteered their prices so that they may lower it to a legal level.

A second necessary tactical change is the need to keep a list of independent station owners in the state. Unlike stations owned and operated by major oil companies and those leased or affiliated with them, independent station owners have a much higher incentive to violate the anti-price gouging law. By targeting independent owners during a disaster and simply increasing

¹³⁶ Don Nelson, *State Posts Results of Gas-Price Probes*, ATHENS BANNER-HERALD (Athens, Ga.), Jan. 9, 2009 (quoting Shawn Conroy, special assistant to the deputy administrator of the Consumer Affairs Office).

¹³⁷ *Id.*

the penalty for major oil company violations, both groups can be better deterred from engaging in price gouging. An example of an effective list of retailers can be seen in Georgia's registration program.¹³⁸

Finally, the greatest avenue for improvement is in establishing national anti-price gouging legislation. Such regulation must be equipped with effective enforcement. After Hurricane Katrina, the federal government found fifteen cases of price gouging across the nation, while more than 130 retailers were prosecuted or settled on an individual State level.¹³⁹ According to Connecticut Attorney General Blumenthal, there was a deliberate downplay of the price manipulation, and states were denied the access to evidence collected by federal authorities.¹⁴⁰ Not surprisingly, states under their current regulations are not in a position to punish profiteering by Big Oil. Rather, they are mostly focused on deterring retailers because it is much easier to calculate the markup by subtracting the consumer price against the supplier's price.

However, it is much more difficult to analyze just how much it costs to drill and refine oil as an individual State. Retailers in Florida voiced their growing concern after Hurricane Ike stating that "they are being singled out unfairly" and "the real test...is what happens to wholesalers and big oil companies further up the supply line."¹⁴¹ Under current Florida regulations, even if the State presses successful charges against ExxonMobil, because the maximum fine is \$25,000 per day, it would take them just under seventeen seconds to pay it off when the net profit is calculated at \$1,485.55 per second for the second quarter.¹⁴²

The difficulty in enacting national anti-price gouging legislation stems from heavy lobbying activity by the oil and gas industry, including both refining and marketing companies. According to the Center for American Progress Action Fund, between 1989 and 2006, Big Oil gave \$29 million dollars in direct campaign contributions to the House representatives, with some legislators receiving more than \$335,000.¹⁴³ In 2008, a bill to create a national anti-price gouging statute stalled in the House when it failed by 276 to 146 votes.¹⁴⁴ This is a testament to the oil industry's influence in Washington,

¹³⁸ GA. CODE ANN. §38-3-56 (West 2008).

¹³⁹ Press Release, Connecticut Attorney General's Office, Attorney General Calls Federal Gasoline Price Gouging Report Inadequate (May 22, 2006).

¹⁴⁰ *Id.*

¹⁴¹ Charles Elmore & Susan Salisbury, *Price-gouging Claims Test State's Crackdown Talk*, THE PALM BEACH POST, Sept. 20, 2008, at 1A.

¹⁴² *Id.*

¹⁴³ Daniel J. Weiss & Anne Wingate, Big Oil's Favorite Representatives, CENTER FOR AMERICAN PROGRESS ACTION FUND, Aug. 22, 2007, available at http://www.americanprogressaction.org/issues/2007/house_oil.html.

¹⁴⁴ FEDERAL PRICE GOUGING PREVENTION ACT OF 2008, H.R. 6346, 110th Cong. (2d Sess. 2008).

where they can successfully block anti-price gouging bills despite overwhelming support by consumers everywhere.

As most of the goods and services regulated include general-need items, along with vital supplies, under the statute's general language, in case of a true disaster affecting the market supply of vital items like water, the current regulation will not be enough to protect the citizens. In an extreme case like a water shortage, even the maximum criminal penalty of five years will not prevent sellers from attempting to extract excessive prices of goods even at the cost of denying people of items essential for survival. In a case of extreme disaster that threatens the supply of essential goods, the most effective regulatory action may be to nationalize the distribution process and directly oversee its sales.